



URBAN JUSTICE CENTER
Community Development Project
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August 11, 2017

Director Marisa Lago
Department of City Planning
120 Broadway, 31st floor
New York, New York 10271

HAND DELIVERED AND VIA FIRST CLASS MAIL

Re: Unlawful Process to Approve Development in the Two Bridges LSRD

Director Lago,

We are writing this letter on behalf of GOLES (Good Old Lower East Side), CAAAV: Organizing Asian Communities, Tenants United Fighting for the Lower East Side (TUFF-LES), and Lands End One Tenant Association (LEOTA) to bring your attention to legal deficiencies in the Department's treatment of applications for new construction in the Two Bridges Large-Scale Residential Development (LSRD) area filed by JDS Development Group, Two Bridges Associates, LP (joint venture of CIM Group & L&M Development Partners), and Starrett Development. Developers seek approval for the following changes to the Two Bridges LSRD:

- **Adding a thousand-foot-tall building with 660 residential units on Rutgers Slip** which requires approval for increasing floor area and lot coverage beyond what is now permitted; and approval for reconfiguring the existing building to allow for new ground floor retail.
- **Adding an 800-foot building (two towers) with 1,350 units on Cherry Street** which requires approval for increasing floor area and lot coverage beyond to what is now permitted; approval for relocating 103 parking spaces; and approval for enlarging ground floor retail space.
- **Adding a 700-foot building with 765 units on Clinton Street** which requires approval for increasing floor area and lot coverage beyond what is now permitted.¹

¹ See *Two Bridges LSRD Draft Scope of Work for Preparation of a Draft Environmental Impact Statement*, at pgs. 2-3.

In his August 11, 2016, letter (enclosed), former Director Carl Weisbrod arbitrarily classified the requested approvals to add four new towers and nearly 3,000 new units as “minor modifications” to the existing LSRD and unlawfully determined that the completion of an Environmental Impact Statement and your Department’s own examination of “the affect the proposed buildings will have on light and air in the surrounding area, as well as neighborhood consequences related to increased density (such as the need for schools), among many other factors” is the appropriate pathway for approving them.

The Zoning Resolution of the City of New York (herein “ZR”) permits development in the LSRD area only as described in the original LSRD application and subsequent amendments; amendments may be Authorized by the City Planning Commission (CPC) or granted via a Special Permit after specific findings are made.² Special Permit applications must go through the Uniform Land Use Review Procedure (ULURP); City Council may “take up” Special Permit applications for an up or down vote.³

The enormous buildings JDS Development Group, Two Bridges Associates, LP and Starrett Development seek to build now were not part of the original LSRD plan as adopted in 1972, nor part of the amendments made for construction in later Authorized and Permitted Phases.⁴

The ZR does not allow for *any* modification of previously granted Authorizations and Special Permits in the Two Bridges LSRD.⁵

In the August 2016 letter, your Department’s former Director referred to Section 2-06(g)(5)(ii) of the ULURP Rules in his letter outlining the Enhanced EIS process for approving a “minor modification” to an existing LSRD. The Rule the Director attempted to rely on does not belong in the approval process for changes to an LSRD. The Rule he cited has only been adopted for application in a specific context: when a Land Use application is altered in the midst of ULURP review after the CPC has voted on a prior version; the rule provides the standard for determining whether a new CPC vote is needed during the period for City Council review. The text of the Rule itself is clear:

² See Zoning Resolution of the City of New York §§ 78-311, 78-312, 78-313.

³ See ULURP Rules, New York City Charter §§ 197-d(b)(2) - (3) & 197-c(a)(4).

⁴ Subsequent to the adoption of the Two Bridges LSRD by City Council in 1972, several amendments have been approved for subsequent Phases of development. City Council approved the most recent phase of development on Parcel 4B, Block 248, lots 15, 76 in 1995 via a vote on an amendment application that included an Authorization, a Special Permit and two certifications after ULURP on March 7, 1995. See C 980078 ZSM.

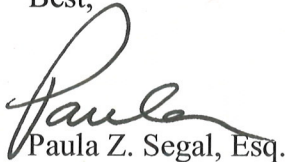
⁵ Modification of previously granted LSRD Authorizations and Special Permits may only be sought and approved for three specifically identified LSRD parcels in the entire City: (1) vacant parcels in the West Side Urban Renewal Area, id. § 78-06(b)(2), (2) vacant parcels in Queens Community District 7, id. § 78-06(b)(4), and (3) parcels used as open space for the term of the URA Plan in the Ruppert Brewery URA, id. § 78-06(b)(7). Two Bridges is not an LSRD plan that can be modified.

The Commission shall receive from the City Council *during its fifty (50) day period for review* copies of the text of any proposed modification to the Commission's prior approval of an action. Upon receipt the Commission shall have fifteen (15) days to review and to determine... whether the modification requires the initiation of a new application.⁶

Any other use of this rule is *ultra vires*: it is outside the scope of authority delegated to your Department pursuant to the requirements of the City Administrative Procedure Act. Any determination based on such a misuse of a rule is null and void. The applications filed by JDS Development Group, Two Bridges Associates, LP, and Starrett Development are not, at this time, going through ULURP; there has been no CPC hearing or vote. **The rule former Director Weisbrad cited is irrelevant and its application here is unlawful.** It cannot be used to circumvent the approval procedures mandated in the ZR. Further, any reliance on approvals granted for past projects is misplaced because those approvals cannot be transferred to the present applications⁷ and have lapsed.⁸

Your Department must direct JDS Development Group, Two Bridges Associates, LP, and Starrett Development to seek approval for making changes to the existing Two Bridges LSRD area plan by seeking Authorizations and Special Permits to alter it to allow for the towers they seek to build. Should approvals for the proposed towers be granted at the conclusion of the deficient process outlined in the August 2016 letter and now underway, our clients will exercise their right to seek judicial review.

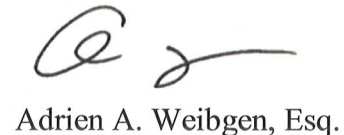
Best,



Paula Z. Segal, Esq.



Melissa B. Risser, Esq.



Adrien A. Weibgen, Esq.

⁶ See *Windsor Owners Corp. v. City Council of City of New York*, 23 Misc.3d 490 (Sup. Ct., N.Y. Cty. 2009).

⁷ For example, M 120183 ZSM (July 8, 2013)(an Authorization for a 120-unit palliative care building that was not funded or built) and C 950078 ZSM (Jan. 18, 1995)(Special Permit and Authorization to approve a 21-story building that was subsequently funded and built) describe specific projects distinct from the ones developers seek to have approved today.

⁸ Prior approvals automatically lapse when projects do not move substantially forward within four years. Zoning Resolution of the City of New York §§ 78-07; 11-42 (“Any authorization or special permit granted by the City Planning Commission ... shall automatically lapse if substantial construction, in accordance with the plans for which such special permit or authorization was granted, *has not been completed within four years* from the effective date of such permit or authorization” (emphasis added)). The HealthCare Chaplaincy approval, the latest granted in the Two Bridges LSRD, lapsed on July 8, 2017, as construction on that project as approved had not even begun by that day. Even the HealthCare Chaplaincy would need to seek a new approval in order to be permitted to build exactly what was allowed it in 2013; relying on that approval for out-of-scale construction of an entirely different form than was approved clearly violates the ZR.

CC: NYC Mayor Bill de Blasio, via email
First District Council Member Margaret Chin, via email
Manhattan Borough President Gale Brewer, via email
NYC Comptroller Scott Stringer, via email
NYC Public Advocate Letitia James, via email
Robert Dobruskin, Department of City Planning, via email
Malinda Rachel, Department of City Planning, via email
Jim Merani, Department of City Planning, via email
Hannah Marcus, Department of City Planning, via email
Kenneth J. Knuckles, Esq., Vice Chairman, City Planning Commission, via DCP
Rayann Besser, Commissioner, City Planning Commission, via email
Irwin G. Cantor, P.E., Commissioner, City Planning Commission, via DCP
Alfred C. Cerullo, III, Commissioner, City Planning Commission, via DCP
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Hope Knight, Commissioner, City Planning Commission, via DCP
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Orlando Marín, Commissioner, City Planning Commission, via DCP
Larisa Ortiz, Commissioner, City Planning Commission, via DCP
Assemblymember Yuh-Line Niou, via email
State Senator Daniel Squadron, via email
Congressional Representative Nydia Velazquez, via email
Alice Cancel, District Leader, via email
Rev. Pedro Cardi, District Leader, via email
Jamie Rogers, Chair, Community Board 3, via email
Lower East Side Organized Neighbors (LESON), via email
Two Bridges Tower Resident Association, via email

GOLES (Good Old Lower East Side), via email
CAAAY: Organizing Asian Communities, via email
Tenants United Fighting for the Lower East Side (TUFF-LES), via email
Lands End One Tenant Association (LEOTA), via email

Encl.: Former Director Carl Weisbrod August 11, 2016 letter



DEPARTMENT OF CITY PLANNING
CITY OF NEW YORK

OFFICE OF THE DIRECTOR

August 11, 2016

Hon. Margaret Chin
Council Member, District 1
250 Broadway, Suite 1882
New York, NY 10007

Hon. Rosie Mendez
Council Member, District 2
250 Broadway, Suite 1734
New York, NY 10007

Hon. Gale Brewer
Manhattan Borough President
1 Centre Street, 19th Floor
New York, NY 10007

Hon. Daniel Squadron
NYS State Senator, District 26
250 Broadway, Suite 2011
New York, NY 10007

Hon. Alice Cancel
NYS Assembly Member, District 65
250 Broadway, Room 2212
New York, NY 10007

Hon. Nydia Velazquez
U.S. Congresswoman, District 7
500 Pearl Street, Suite 973
New York, NY 10007

**RE: Pre-Application Statements (PAS) for Two Bridges
Manhattan Blocks 246, 247 and 248**

Dear Council Member Chin, Council Member Mendez, Borough President Brewer, Senator Squadron, Assembly Member Cancel, and Congresswoman Velazquez:

I appreciate your concerns regarding the proposed changes to the existing Two Bridges Large Scale Residential Development (Two Bridges LSRD) within the former Two Bridges Urban Renewal Area, as expressed in your letter to me dated June 22, 2016. I agree that the development contemplated here is significant when each proposed development is considered individually, and that the potential impacts to the surrounding neighborhood require unique consideration when the three proposed projects are assessed cumulatively.

As you are aware, the City Planning Commission created the Two Bridges LSRD in 1972 to support the Two Bridges Urban Renewal Area approved by the Commission in 1967. Through the LSRD regulations, the Commission granted waivers for distribution of permitted rooms without regard for zoning lots or district boundaries; for yard, height, and setback regulations wholly within the development; and for height and setback regulations on the periphery of the development. In 1995, the Commission granted additional waivers for height and setback regulations wholly within the development and for minimum distance between buildings.

August 11, 2016

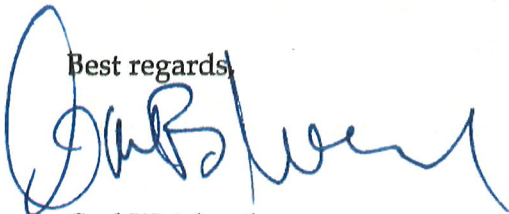
The determination of whether a modification to a prior special permit is "major" or "minor" is based on whether the proposed modification would require new waivers or zoning actions or increase the extent of any previously granted waivers. The criteria governing this determination are those codified in Section 2-(6)(g)(5)(ii) of the ULURP Rules (attached). Here, because the proposed modifications will not require any new waivers or zoning actions or increase the extent of previously granted waivers, the modifications will be treated as "minor".

However, although these proposals will not be reviewed as major modifications, the Department of City Planning is committed to working with you closely as we review the applications for these developments. We are requiring the completion of an Environmental Impact Statement (EIS) in conjunction with these applications, and are pleased that the applicants have agreed to a coordinated review of the proposals, to ensure that both any cumulative and project-specific potential impacts are identified and addressed through the public process mandated by CEQR,

We are committed to ensuring that the proposed projects are reviewed in accordance with urban design principles that result in, among other things, an improved streetscape and pedestrian condition along both South Street and Cherry Street and attention to the relationship between existing and new buildings on the project sites. We will also closely examine the affect the proposed buildings will have on light and air in the surrounding area, as well as the neighborhood consequences related to increased density (such as the need for schools), among many other factors.

I know that the development of this area is of significant consequence to you and the neighborhood. We appreciate your engagement with these important land use matters and look forward to working closely with you as we review these proposals. Please feel free to reach out to us with any questions at any time.

Best regards,



Carl Weisbrod

Encl: *Section 2-06 City Planning Commission Actions*

Section 2-06 - City Planning Commission Actions

...

(5) Review of Council Modifications

The Commission shall receive from the City Council during its fifty (50) day period for review copies of the text of any proposed modification to the Commission's prior approval of an action. Upon receipt the Commission shall have fifteen (15) days to review and to determine:

(i) in consultation with the Office of Environmental Coordination and lead agency as necessary, whether the modification may result in any significant adverse environmental effects which were not previously addressed; and

(ii) whether the modification requires the initiation of a new application. In making this determination, the Commission shall consider whether the proposed modification:

(A) increases the height, bulk, envelope or floor area of any building or buildings, decreases open space, or alters conditions or major elements of a site plan in actions (such as a zoning special permit) which require the approval or limitation of these elements;

(B) increases the lot size or geographic area to be covered by the action;

(C) makes necessary additional waivers, permits, approvals, authorizations or certifications under sections of the Zoning Resolution, or other laws or regulations not previously acted upon in the application; or

(D) adds new regulations or deletes or reduces existing regulations or zoning restrictions that were not part of the subject matter of the earlier hearings at the community board or Commission.

If the Commission has determined that no additional review is necessary and that, either, no significant impacts will result, or that possible environmental impacts can be addressed in the time remaining for Council review, it shall so report to the Council. The Commission may also transmit any comment or recommendation with respect to the substance of the modification, and any proposed further amendment to the modification which it deems as necessary or appropriate.

If the Commission has determined that the proposed modification will require a supplementary environmental review or the initiation of a new application, it shall so advise the Council in a written statement which includes the reasons for its determination.

